

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1578 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

HARISH @ HONDA KHANABHAI SOLANKI

Versus

COMMISSIONER OF POLICE AHMEDABAD

Appearance:

MR MUKESH D RAVAL for Petitioner

MR DP JOSHI AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 02/11/1999

ORAL JUDGEMENT

#. Heard the learned advocate Mr. M.D. Raval for the petitioner and Mr. D.P.Joshi, learned AGP for the respondents. The detention order dated 18th January, 1999 passed by respondent no.1 - Commissioner of Police, Ahmedabad city in exercise of power conferred under section 3 (1) of Gujarat Prevention of Anti-social Activities Act, 1985 ("PASA" for short) is challenged in the present petition under article 226 of the

Constitution.

#. The grounds of detention supplied to the petitioner, copy of which is produced at Annexure : C inter alia indicate that three Prohibition cases are registered at Odhav and Kagdapith Police Stations against the petitioner in between 26.1.98 and 27.6.98. That in each case, Indian made foreign liquor has been seized from the possession of the petitioner. Furthermore, the grounds indicate that two witnesses vide their statements dated 24.12.98 and 2.1.99 respectively have given information about the bootlegging activity of the petitioner. That in consideration of the above-stated material, respondent no.1 as detaining authority has come to conclusion that the petitioner is a "bootlegger" within the meaning of section 2 (b). That resort to general provisions of law being insufficient to prevent the petitioner from continuing his anti-social activity which adversely affects the maintenance of public order, the detention order is necessary and hence the impugned order is passed.

#. The petitioner has challenged the impugned order on numerous grounds. It has been contended at bar on behalf of the petitioner that the detaining authority has observed in penultimate para that the petitioner was absconding in respect to CR No. 5065 of 1999 registered at Kagdapith Police Station, however, having been arrested, he is in police custody. But on production in the court, the petitioner is likely to apply for bail and having released himself on bail, is likely to continue his bootlegging activity. That thereby less drastic remedy of cancellation of bail or opposing the bail has not been considered before passing the impugned order which has vitiated the subjective satisfaction rendering the impugned order invalid.

#. In the matter of Zubedabibi vs. State of Gujarat, reported vide 1995(2) GLR, 1134, Division Bench of this Court has expressed a view that non consideration of less drastic remedy like cancellation of bail available under section 437(5) of Cr.P.C. discloses non application of mind on the part of the detaining authority vitiating the subjective satisfaction and rendering the detention order invalid. That the said view has been approved and endorsed in L.P.A. No. 1056/99 decided on 15.9.99 by this Court (Coram: C.K.Thakkar & A.L.Dave, JJ).

#. In the instant case, the grounds of detention, particularly penultimate para discloses that the detaining authority has acted on apprehension that on

production of the petitioner as accused in the competent court, the petitioner would apply for bail and after getting himself released on bail, he is likely to continue his anti-social bootlegging activity. That the said observation discloses that the detaining authority has not considered the aspect of less drastic remedy like cancellation of bail though available under section 437(5) of Cr.P.C. That thereby, I am constrained to hold that the subjective satisfaction reached by the petitioner in passing the impugned order having been vitiated, the order is rendered invalid.

#. As the petition succeeds on the above-stated ground alone, it is not necessary to consider the other contentions raised in the petition.

#. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 18.1.99 passed by respondent no.1 against the petitioner is hereby quashed and set aside. The petitioner-detenu-Harish @ Honda Khanabhai Solanki is hereby ordered to be set at liberty, if not required in any other case. Rule to that extent is made absolute.

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